IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Criminal Appeal No.394 of 1999.

Date of decision: 02.03.2006.

State of H.P. **….Appellant.**

Versus

Sat Parkash & Others. **…..Respondents.**

Coram

The Hon'ble Mr.Justice K.C. Sood,J.

Whether approved for reporting ?[1]

For the Appellant: Mr.Ashok Chaudhary, Additional Advocate General.

For the Respondent:Mr.Baldev Singh, Advocate.

K C SOOD,J.(Oral).

This appeal under Section 378 of the Code of Criminal Procedure is directed against the judgment of acquittal recorded by the learned Additional Chief Judicial Magistrate, Ghumarwin, District Bilaspur, Dated 19th April, 1999.

It appears, the respondents, hereinafter referred to as the "accused", were tried for offences punishable under Section 379 of the Indian Penal Code read with Sections 41 and 42 of the Indian Forest Act and were acquitted by the learned trial Magistrate by its impugned judgment.

The prosecution case:

On 15th August, 1992 accused had booked a truck HIB-545 at ACC Cement Factory Barmana to transport 180

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

bags of cement from ACC Barmana to Amritsar via Swarghat. They also, dishonestly, carried in this truck 170 tins of resin. This truck was intercepted near B.D.O. Office at Ghumarwin. The accused did not have any valid permit for transporting the resin. After investigation, the Investigating Agency concluded that accused had stolen this resin and were carrying it to Amritsar without any valid permit and thus committed an offence punishable under Section 379 of the Indian Penal Code read with Sections 41/42 of the Indian Forest Act.

Admittedly, the resin belongs to Hem Raj, Contractor, who had a valid permit for extracting resin and therefore, there is no question of theft of resin having been committed by any of the accused. So far the transportation of the resin is concerned, it is admitted position that the resin could be carried or transported within the Estate without any permit. The prosecution case is that this resin was loaded in the truck in village Dehar and the truck stopped near B.D.O. Office at Ghumarwin which is admittedly within the Estate. No evidence was led by the prosecution to show that in-fact this resin was meant to be transported to Amritsar as claimed by the prosecution.

Jagdish Singh, then posted as Range Clerk in the Office of Range Officer, Ghumarwin, admitted in his cross-examination that accused had made an application (Ex.D-1) to him for the transportation of this resin from one depot to another. He also says that no permit was required to carry this resin to other depot and admittedly the place

where the truck was intercepted was on the way to the other depot.

For the reasons recorded above, the acquittal cannot be said to be either dehors the evidence or against the weight of the evidence on record.

No interference is called for.

The appeal is dismissed.

March 2, 2006 **(K C Sood)**
(aks) **Judge**